

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 691 - HB 1067

March 15, 2011

SUMMARY OF BILL: Increases the penalty for attempted first degree murder, aggravated rape, and carjacking, if committed in concert with two or more persons, to one classification higher than if the offense had been committed alone where the victim knew or reasonably should have known that at least three people participated in the crime. Defines “acting in concert” as conduct that would make a person criminally responsible under current criminal statutes addressing parties to offenses, criminal responsibility for the conduct of another, and criminal responsibility for facilitation of a felony. Sets the presumptive sentence for such Class A felonies at the maximum within the range.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$1,363,900/Incarceration*

Assumptions:

- According to the Department of Correction (DOC), there has been an average of 45 admissions for the Class A felony of attempted first degree murder in each of the past 10 years. DOC assumes 12 percent (5) of those were committed in concert with two or more persons and will receive the maximum sentence of 25 years for a Class A felony. The average post-conviction time served for a Class A felony is 16.68 years (6,092.37 days).
- According to the U. S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in one additional offender in the tenth year serving additional 8.32 years (25 years – 16.68 years).
- According to the Department, 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (6 offenders x 46.4% recidivism discount = 3 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on three offenders (6-3) serving an additional 8.32 years (3,038.88 days).

- According to DOC, the average operating cost per offender per day for calendar year 2011 is \$60.62. The cost per offender at 8.32 years (3,038.88 days) is \$184,216.91 (\$60.62 x 3,038.88 days). The total additional operating cost for three offenders is \$552,650.73 (\$184,216.91 x 3).
- According to DOC, there has been an average of 25 admissions for the Class A felony offense of aggravated rape in each of the past 10 years. DOC assumes 12 percent (3) of those offenders were committed in concert with two or more persons and will receive the maximum sentence of 25 years for a Class A felony. No significant incarceration cost increase will occur due to population growth in this period. A recidivism discount of 46.4 percent ($3 \times 46.4\% = 1$) will result in two offenders (3-1) serving an additional 8.32 years in the tenth year. The cost per offender at 8.32 years (3,038.88 days) is \$184,216.91 (\$60.62 x 3,038.88 days). The total additional operating cost for two offenders is \$368,433.82 (\$184,216.91 x 2).
- According to DOC, there has been an average of 28 admissions for the Class B felony of carjacking in each of the past 10 years. DOC assumes 12 percent (3) of those were committed in concert with two or more persons and will receive a Class A felony.
- The average post-conviction time served for a Class B felony is 5.66 years (2,067.32 days). No significant incarceration cost increase will occur due to population growth in this period. A recidivism discount of 46.4 percent ($3 \times 46.4\% = 1$) will result in two offenders (3-1) serving an additional 11.02 years (16.68 Class A – 5.66 Class B) in the tenth year. The cost in the tenth year is \$221,414.55 (\$60.62 x 3,652.50 days). The total additional operating cost for two offenders in the tenth year is \$442,829.10 (\$221,414.55 x 2).
- The total additional operating cost is \$1,363,913.65 (\$552,650.73 + \$368,433.82 + \$442,829.10).

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc